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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 32

MILWAUKEE COUNTY,

v.

M. E. WHITE COMPANY

On Certificate From the United States Circuit Court of Appeals for the Seventh Circuit

BRIEF OF APPELLANT, MILWAUKEE COUNTY

WM. A. ZABEL,
District Attorney,
Milwaukee County, Wisconsin;
O. L. O'BOYLE,
Corporation Counsel,
Milwaukee County, Wisconsin;
CLARK J. A. HAZELWOOD,
Assistant Corporation Counsel,
Milwaukee County, Wisconsin;
Attorneys for Milwaukee County.

JAMES E. FINNEGAN,
Attorney General,
State of Wisconsin;
HERBERT H. NAUJOKS,
Assistant Attorney General,
State of Wisconsin;
JAMES G. CULBERTSON,
of Chicago, Illinois,
of Counsel.

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The appellant, Milwaukee County, brought suit in the United States District Court of Illinois against the M. E. White Company, an Illinois corporation. The action is one on a judgment obtained by Milwaukee County in the courts of the State of Wisconsin in the sum of $52,156.84 and such judgment was for income taxes duly assessed by the State against the M. E. White Company upon its income earned by said Company upon its business transacted in the State of Wisconsin under a license to transact business within that State.

A motion to dismiss this suit was made by the White Company upon the ground, among others, that the United States District Court will not exercise jurisdiction of or take cognizance of the subject matter of the action.

QUESTION INVOLVED 3

Should a United States District Court in and for the State of Illinois, having jurisdiction of the parties, entertain jurisdiction of an action therein brought based upon a valid judgment for over $3,000 rendered by a court of competent jurisdiction in the State of Wisconsin against the same defendant, which judgment was predicated upon an income tax due from the defendant to the State of Wisconsin?

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An action brought in a United States District Court in and for the State of Illinois for the purpose of enforcing a valid judgment predicated upon a tax liability of appellee corporation to appellant, Milwaukee County, under the laws of Wisconsin, wherein appellee as a "foreign corporation" transacted business as a licensee of said state, is a suit "of a civil nature" within the meaning of Section 24 of the Judicial Code and the right to maintain such action is established by Article IV, Section 1, United States Constitution relating to "Full Faith and Credit" 4

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No. 32

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On Certificate From the United States Circuit Court of Appeals for the Seventh Circuit

BRIEF OF APPELLANT, MILWAUKEE COUNTY

PRELIMINARY STATEMENT

This case comes on for hearing in this court on a certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

A STATEMENT OF THE FACTS

The relevant facts in this controversy, as stated by the United States Circuit Court of Appeals for the Seventh Circuit, are as follows:

> "Appellant, Milwaukee County, as a county of the State of Wisconsin and a citizen of said state, brought suit in the District Court of the United States for the Northern District of Illinois against appellee, M. E. White Company, a corporation, citizen, and inhabitant of the State of Illinois.

"Appellant filed its declaration, wherein it was alleged that there was diversity of citizenship of the parties, and that the matter in controversy, exclusive of interest and costs, exceeds the sum of $3,000;

"That on January 26, 1933, in the Circuit Court of the County of Milwaukee in the State of Wisconsin, the same being a court of general jurisdiction, a judgment was rendered in favor of said Milwaukee County and against the said M. E. White Company in the sum of $52,156.84, together with costs, and that such judgment was for income taxes duly assessed against the said M. E. White Company upon its income earned by said M. E. White Company upon its business transacted in the State of Wisconsin under appellee's license to transact business within that state.

"After the entry of said judgment in appellant's favor in the Circuit Court of Milwaukee County, appellant brought its said suit on said judgment in the United States District Court for the Northern District of Illinois. * * *

"On August 8, 1933, said M. E. White Company, by its attorneys, entered its appearance in the said District Court, and on December 11, 1933, filed its motion in said District Court to dismiss the said suit upon the ground, *inter alia,* that 'IV. That this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action' * * *.

"Upon the hearing of the said motion to dismiss, the District Court considered only the proposition 'That this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action,' and decided that the District Court will not take jurisdiction thereof, and dismissed the action, giving judgment for costs against appellant* *. *."

It will be noted that the Circuit Court of Appeals observed in its statement of facts above quoted, that the income taxes were *duly* assessed against the appellee

company which is now a judgment debtor of the appellant county in the Wisconsin Court and that these taxes were based upon the debtor's income earned *"upon its business transacted in the State of Wisconsin under appellee's license to transact business within that state."*

QUESTION INVOLVED

The question stated in the certificate is as follows:

> "Should a United States District Court in and for the State of Illinois, having jurisdiction of the parties, entertain jurisdiction of an action therein brought, based upon a valid judgment for over $3,000 rendered by a court of competent jurisdiction in the State of Wisconsin against the same defendant, which judgment was predicated upon an income tax due from the defendant to the State of Wisconsin?"

Appellant asserts that this action, being based upon a valid Wisconsin judgment, is entitled to the cognizance of a United States District Court in and for the State of Illinois. The appellee, on the contrary, urges that because the Wisconsin judgment is predicated upon a tax owed by the appellee to appellant under Wisconsin revenue laws, the District Court in and for Illinois is without jurisdiction to entertain the suit. It is claimed by appellee that this action is not a "suit of a civil nature" within the meaning of Section 24 of the Judicial Code (28 U. S. C. A. Sec. 41) and that the so-called "full faith and credit" provision of the United States Constitution (Art. IV, Sec. 1) gives no support to appellant's case.

This argument of appellee was sustained by the United States District Court (Certificate: pages 13-15).

Appellant here contends that the District Court erred in denying jurisdiction to this suit and that the question certified should therefore be answered in the affirmative.

PROPOSITION OF LAW

The question certified should be answered in the affirmative for the reason that the action at bar is clearly within the jurisdiction of the United States District Court because:

An action brought in a United States District Court in and for the State of Illinois for the purpose of enforcing a valid judgment predicated upon a tax liability of appellee corporation to appellant, Milwaukee County, under the laws of Wisconsin, wherein appellee as a "foreign corporation" transacted business as a licensee of said state, is a suit "of a civil nature" within the meaning of Section 24 of the Judicial Code and the right to maintain such action is established by Article IV, Section 1, United States Constitution relating to "Full Faith and Credit."

MATERIAL CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional provision here involved is as follows:

Article IV, Section 1, United States Constitution:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The Act of May 26, 1790, Ch. 11; 28 U. S. C. A. No. 687, provides for the proper authentication of a judgment of a sister state and further states that all such authenticated judgments *"shall have such faith and credit given to them in every court within the United States as they have by law or usage in the court of the state from which they are taken."*

The portion of the Judicial Code herein involved is as follows:

Sec. 24, Judicial Code (28 U. S. C. A., sec. 41):

> *"Original Jurisdiction*: The district courts shall have original jurisdiction as follows:
>
> "(1) *United States as plaintiff; civil suits at common law or in equity.* First: Of all suits of a *civil nature,* at common law or in equity, brought by the United States, or any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00, and (*a*) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (*b*) is between citizens of different States, or (*c*) is between citizens of a State and foreign States, citizens, or subjects * * *." (Italics ours.)

Section 226.02 of the Statutes of Wisconsin regulating the admission of foreign corporations to do business in the State of Wisconsin provides, in part, as follows:

> "(3) Statement Filed; Attorney for Service of Process. A foreign corporation desiring a license shall also file with the secretary of state a sworn statement by its president, secretary, treasurer or general manager stating:

"• • •

"(h) That as a condition of its being permitted to begin or continue doing business in this state, it will comply with all the laws of the state applicable to foreign corporations."

Section 71.01, Wisconsin Statutes, provides, in part, as follows:

"There shall be assessed, levied, collected and paid a tax on all net incomes as hereinafter provided, by every person • • • by every nonresident of the state, upon such income as is derived from property located or business transacted within the state, except as hereinafter exempted. • • •"

ARGUMENT

I. THE UNITED STATES DISTRICT COURT HAS JURISDICTION OF AND MUST ENTERTAIN THE PENDING ACTION, IT BEING ONE OF A "CIVIL NATURE" WITHIN THE MEANING OF THE UNITED STATES JUDICIAL CODE (28 U. S. C. A. sec. 41).

This action is within the jurisdiction of the United States District Court in and for the State of Illinois because it is a suit "of a civil nature" within the Judicial Code (28 U. S. C. A., sec. 41) and the right to maintain it is established by the "Full Faith and Credit" clause of the Constitution (Art. IV, sec. 1, U. S. Const.).

We are told by the appellee corporation that the law prohibits one state of this Union, or a subdivision thereof, from entering a federal court of another state for the purpose of suing a corporation, which admittedly owes a judgment of more than $50,000.00 for taxes due the

plaintiff, because this is allegedly not a suit "of a civil nature."

Before any reference is made to authorities on the subject, it should appear that this argument is untenable on its face. The term "civil" in this statute obviously is meant to cover all causes not criminal. The judicial code in subsequent subsections, provides for the court's jurisdiction in the criminal field wherein the scope is limited to violations of criminal laws of the United States. No such limitations appear as to the civil field of the law.

A liability created by any rule of common law or statute other than by a strictly penal law, is clearly *civil*. In the case at bar, the demand upon the appellee is not, in any sense, penal. Appellant is not seeking to redress a wrong done the people of Wisconsin by violation of its criminal law. No claim is made that appellee has violated a criminal code, or is guilty of any act or omission against the peace and dignity or against the sovereignty of the State of Wisconsin for which the appellee merits punishment.[1]

Appellee argues further that, in order that a suit may be considered "of a civil nature," within the meaning of the United States Judicial Code (28 U. S. C. A., sec. 41), it must, in the case of this governmental plaintiff, involve a contractual or quasi-contractual demand. However, Federal District Courts dispose of thousands of "civil" controversies where the liability is not contractual. There is no just reason why controversies involving private litigants

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[1] In this respect, the case differs from the case of *Wisconsin v. Pelican Insurance Co.*, (1888) 127 U. S. 265, 32 L. Ed. 239, 8 S. Ct. 137, involving the original jurisdiction of the Supreme Court, which decision the appellee corporation urges is controlling as making against the jurisdiction of the United States District Court to entertain this action. That case was decided solely on a construction of Art. III, sec. 2, U. S. Constitution and the "full faith and credit" clause (Art. IV, sec. 1) was not involved.

may extend throughout the whole field of civil liabilities, whereas controversies involving municipalities as plaintiffs, which have been held to be "citizens" within the meaning of the jurisdictional laws, must be limited to the "contractual" field.

However, if this narrow interpretation of the word "civil" as applied to the case at bar is to be considered, a fair observation of the nature of an income tax liability shows it to be an obligation not only analogous to, but with a foundation more sacred than, any contractual liability. Appellee's liability to appellant for taxes based on income earned within the State of Wisconsin flows from appellee's choice in entering that state as an Illinois corporation, agreeing to comply with Wisconsin laws in order to obtain a license therein and in subsequently transacting its business therein out of which it reaped its profits. Appellee thus, by its own acts, became indebted to the appellant for its opportunity to earn profits within appellant county, wherein the protection and benefits of an orderly government were received. This debt became evidenced under Wisconsin law by the fairest possible measure of liability, to-wit: an income tax. The record, set forth in the certificate, pages 5 and 9, shows that appellee was given an opportunity to be heard with respect to the assessment of this income tax indebtedness, that it took this opportunity and appealed to the Wisconsin Tax Commission, that it had its second opportunity when sued in the Wisconsin court (Certificate pages 4-7) prior to the entry of the Wisconsin judgment on which this suit is predicated. Thus, the demand here asserted is, to a considerable extent, contractual in its nature.

Almost all judgments, on whatever cause of action they may be predicated, represent a contractual or quasi-contractual transaction. This conception is in accord with

the background of the Roman Law and the English common law, "as judgments have been for centuries employed in England as the most formal and conclusive type of record, whether of debt or grant." *Yntema, "The Enforcement of Foreign Judgments in Anglo-American Law,"* 33 Mich. Law Review (June 1935) at page 1147. The author of this quotation goes on to say (pages 1147-48):

> "It is this conception which by analogy has been adopted in England and the United States to form the basis of the recognition and enforcement of foreign judgment."

Thus actions available for enforcement of foreign judgments under the common law system of pleading are the actions of "debt" or "indebitatus assumpit." Under more modern systems of pleading, the derivatives of these forms of action are used.

> "Though the cause of action may have arisen from a tort, the judgment is not therefore any the less a contract or in the nature of a contract. The tort merges in the judgment. Hence it may be the foundation of an action of debt, or of a set-off, under a statute permitting actions *ex contractu* to be set off." 1 Freeman on Judgments (4th ed.) No. 217, p. 384.

A judgment predicated on a tax liability incurred within the United States should be considered on a higher plane than any other judgment. As the enforceability of all other civil judgments of sister states is regarded as within the jurisdiction of a United States District Court, it follows that the demand for enforcing a tax judgment of a sister state, as a suit upon a most sacred obligation, is entitled to cognizance.

II. THE AUTHORITIES SUSTAIN THE VIEW THAT THE TERM "CIVIL ACTION" IS A BROAD AND COMPREHENSIVE ONE AND THAT TAX DEMANDS (AND THEREFORE JUDGMENTS BASED THEREON) ARE WITHIN ITS SCOPE.

In *Florida Central & P. R. Co. v. Reynolds*, (1902) 183 U. S. 471, 475, 46 L. Ed. 283, 285, 22 S. Ct. 176, the United States Supreme Court pointed out:

> "* * * They [taxes] are obligations of the highest character, for only as they are discharged is the continued existence of government possible. They are not cancelled and discharged by the failure of duty on the part of any tribunal or officer, legislative or administrative. Payment alone discharges the obligation, and until payment the State may proceed by all proper means to compel the performance of the obligation. No statutes of limitation run against the State, and it is a matter of discretion with it to determine how far into the past it will reach to compel performance of this obligation."

See also *State ex rel. Globe Steel Tube Co. v. Lyons*, (1924) 183 Wis. 107, 117, 197 N. W. 578.

In *Mariner v. Milwaukee*, (1911) 146 Wis. 605, 609, 139 N. W. 442, the Wisconsin Supreme Court said:

> "Taxes are debts due to the government which a property owner has no more right to withhold than the most sacred debt of a private nature. (Citing cases.)"

Authorities on the meaning of the term "civil action" hold that it is a broad and comprehensive term and generally that tax demands (and therefore judgments thereon) are within its scope.

In re Fox's Estate, (1910) 162 Mich. 531, 127 N. W. 668, (holding that a request by state authorities to the probate court for an order for the payment of an inheritance tax in excess of the amount chargeable against an estate or an appeal from the auditor general from an order of the probate court fixing the inheritance tax is a "civil proceeding" within Comp. Laws, sec. 11277, providing that the people in civil proceedings instituted being proper officers shall be liable for costs to the same extent as individuals instituting such proceedings);

Boston & Maine R. R. v. State, (1910) 75 N. H. 513, 77 Atl. 996, 31 L. R. A. (n.s.) 539, Ann. Cas. 1912A 382 (holding that a petition for abatement of taxes is a civil case within the meaning of a statute (Pub. Stat. 1901, Ch. 225, sec. 1) permitting the taking of depositions in such cases for the use of trial);

Wiscart v. D'Auchy, (1796) 3 U. S. (3 Dall. 321) 240, 1 L. Ed. 619 (discussing the term "civil causes" as used in the Judicial Act regulating the processes in the federal courts);

State ex rel. Kochtitzky v. Riley, et al., (1907) 203 Mo. 175, 101 S. W. 567, 12 L. R. A. (n.s.) 900 (holding that a proceeding to incorporate a drainage district and establish its boundaries is a civil suit within the meaning of those terms in a statute allowing a change of venue in such cases and holding that the word "civil" means relating to rights and remedies sought by action or suit, and that a civil remedy is the right of action given to a person injured as opposed to criminal prosecution;

In re Percival's Estate, (1917) 108 S. C. 39, 93 S. E. 243 (holding that Civ. Code 1912, sec. 3985, authorizing the taking of depositions *de bene esse* in "civil actions" applies to civil actions including special proceedings as dis-

tinguished from criminal actions and holding further that the taking of a deposition *de bene esse* in a proceeding involving escheat and coflictig claims of alleged heirs to itestate's estate was authorized).

See also Words & Phrases, Vol. 1 (2nd ser.) p. 708, *et seq.*; Words & Phrases, Vol. 1 (4th ser.) p. 412, *et seq.*; Words & Phrases, Vol. 2 (1st ser.) p. 1182, *et seq.*; and Words and Phrases, Vol. 2 (3rd ser.) p. 66, *et seq.* for other cases defining the term "civil action."

An action is "civil" rather than "penal" when the real object is not punishment, the fact that a government is plaintiff being immaterial.

Jernigan v. Commonwealth, (1905) 104 Va. 850, 52 S E. 361, 362;
Huntington v. Attrill, (1892) 146 U. S. 657, 673-675, 36 L. Ed. 1133, 13 S. Ct. 224.

In *Huntington v. Attrill*, (1892) 146 U. S. 657, 673-675, 36 L. Ed. 1133, 13 S. Ct. 224, the court in discussing whether a law is penal or civil, said:

"The question whether a statute of one State, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another State, depends upon the question whether its purpose is to punish an offense against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act * * *."

1 Corpus Juris, page 930, Note 22:

"'The term civil actions would, from its natural import, embrace every species of suits which is not of a criminal kind.' Curry v. Marvin, 2 Fla. 411, 417. * * *"

1 Corpus Juris, page 930, Section 8, Civil Action, at 931:

"* * * In a general sense the phrase 'civil actions' includes actions at law, suits in chancery, proceedings in admiralty, and all other judicial controversies in which rights of property are involved, whether between private parties, or such parties and the government * * *."

Note 26:

"The term 'civil action' is held 'to apply to actions in which the government is a party, as well as those between private persons.' Green v. U. S., 9 Wall. (U. S.) 655, 658, * * *."

In 1 Ruling Case Law, pages 325-326, sec. 11, it is said:

"Actions at law are classified under two heads, namely, civil actions and criminal actions; * * * A civil action is one brought to enforce a civil right, and a criminal action is one which has for its object the punishment of a crime. * * *."

See:

Ex parte Tom Tong, (1883) 108 U. S. 559, 2 S. Ct. 871, 27 L. Ed. 826.

Once a cause of action is reduced to judgment, it merges into a liability of a contractual nature, whether predicated upon tort, contract, common law, or statutory liability.

See Words & Phrases, Vol. 2 (2nd ser.) p. 1249 (citing *Hienl v. Terre Haute,* (1903) 66 N. E. 450, 161 Ind. 44, and additional citations.

It is well settled that a judgment for taxes is a debt and that if the State or a subdivision thereof obtains a

personal judgment for taxes, such judgment becomes a debt and an action on such judgment is a civil suit.

Words & Phrases, Vol. 2 (2nd ser.) p. 1874, citing *Rhodes v. O'Farrell*, (1886) 2 Nev. 60, 61.

III. UNDER THE ESTABLISHED LAW THE WISCONSIN JUDGMENT IS FREE FROM ATTACK EXCEPTING ON THE FOLLOWING GROUNDS: (1) LACK OF JURISDICTION IN THE ORIGINAL STATE COURT; (2) FRAUDULENT PROCUREMENT, OR, (3) PAYMENT; AND THE MERITS OR VALIDITY OF THE CLAIM UPON WHICH THE JUDGMENT IS FOUNDED CANNOT BE EXAMINED.

The theory that judgments of the courts of one state become debts of the highest character in all the courts of the United States is a well established part of our constitutional law. The right of the appellant to sue herein is established by Article IV, Section 1, United States Constitution relating to "Full Faith and Credit." Any judgment of a sister state, being entitled to full faith and credit under the constitutional requirement, is alleged and pleaded, as in the case at bar, as the basis of an action in debt or implied contract. This constitutional provision strengthens appellant's plea for its right to file this suit.

It is said that in the proceedings in the Federal Convention, Madison suggested that "the Legislature might be authorized to provide for the *execution* of judgments of other states . . . ."[1] With this in mind, broad constitutional powers were created and Congress in 1790 enacted that the same faith and credit should be given in all courts

[1] 33 Mich. Law Review (June 1935) page 1149. Yntema "The Enforcement of Foreign Judgments in Anglo-American Law.

of the United States to duly authenticated records "as they have by law or usage in the courts of the state from whence the said records are or shall be taken." While this has never been construed to allow execution without suit, the courts in a long line of decisions[1] have affirmed and reaffirmed the rules (a) that judgments of sister states are free from attack excepting on these grounds, to-wit: (1) lack of jurisdiction in the original state court, (2) fraudulent procurement, or (3) payment, and (b) that the merits or validity of the claim upon which the judgment is founded cannot be examined. Nothing in the constitution or any of the statutes relating directly or indirectly to the jurisdiction of the United States courts makes an exception wih reference to judgments predicated upon tax demands.

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[1] *Mutual Life Ins. Co. v. Harris*, (1877) 97 U. S. 331, 335, 24 L. Ed. 959;
Converse v. Stewart, (1911) 192 Fed. 941 (aff. 197 Fed. 152, 118 C. C. A. 212);
Christmas v. Russell, (U. S. 1866) 5 Wall. 290, 302, 18 L. Ed. 475;
Thompson v. Whitman, (U. S. 1873) 18 Wall. 457, 461, 21 L. Ed. 897;
Knowles v. Longsport Gas, Light & Coke Co., (U. S. 1873) 19 Wall. 58, 60, 22 L. Ed. 70;
Hanley v. Donaghue, (1885) 116 U. S. 1, 29 L. Ed. 535, 6 S. Ct. 242;
Renaud v. Abbott, (1886) 116 U. S. 277, 287, 29 L. Ed. 629, 6 S. Ct. 1194;
Huntington v. Attrill, (1892) 146 U. S. 657, 666, 36 L. Ed. 1123, 13 S. Ct. 224;
Fauntleroy v. Lum, (1908) 210 U. S. 230, 236, 52 L. Ed. 1039, 28 S. Ct. 641;
Kennedy v. Supreme Lodge, (1920) 252 U. S. 411, 415, 64 L. Ed. 638, 40 S. Ct. 371;
Roche v. McDonald, (1928) 275 U. S. 449, 451-452, 72 L. Ed. 365, 48 S. Ct. 142.

IV. THE JUDGMENT HEREIN IS ENTITLED TO BE ENFORCED UNDER THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION (ART. IV, SEC. 1), BECAUSE SUCH JUDGMENT WAS RENDERED BY A COURT OF RECORD OF GENERAL JURISDICTIONAL POWERS WITH FULL JURISDICTION OVER BOTH THE PARTIES AND THE SUBJECT MATTER AND BECAUSE TAX JUDGMENTS DO NOT FALL WITHIN THE CLASS OF PENAL CLAIMS.

But appellee asserts that tax judgments fall within the class of "penal" claims and are therefore barred. It has already been pointed out that the judicial code makes especial provision for cases within the "penal" field and that therefore the failure to limit the scope of jurisdiction in the civil field indicates that there is no implied bar to jurisdiction of the instant case. It is conceded, however, that there are a few decisions which may seem to support appellee's argument to the effect that tax claims fall within the same class as "penal" suits. Most of these can be distinguished. They will be discussed later.

The issue, however, so far as we can find, is before this court as an original proposition. Appellant urges that a classification of tax judgment cases within the same class as penal claims such as the one involved in *Wisconsin v. Pelican Insurance Co.*, (1888) 127 U. S. 265, 32 L. Ed. 239, 8 S. Ct. 127 will be a most backward step and a most unfortunate precedent to establish in these United States, in the face of the broad provisions of the "Full Faith & Credit" clause.

This court very recently considered the scope of the "Full Faith and Credit" clause in the case of *Broderick*

v. Rosner, 79 L. Ed. (Adv. Ops.) 619, 55 Sup. Ct. Rep. 589. It was held that one state cannot "deny the enforcement of claims otherwise within the protection of the full faith and credit clause, when its courts have general jurisdiction of the parties." The liability of bank stockholders under New York law was held assertable in a New Jersey court by suit in the name of the New York Banking Commissioner upon the assessment as determined under New York law, despite New Jersey legislation which attempted to restrict the jurisdiction of its courts over that subject matter. If the "Full Faith" clause is thus supreme over state courts, it follows that this clause, being applicable to United States courts as well, must control the action at bar, regardless of appellee's interpretation of the Judicial Code. Appellee's interpretation of the Judicial Code is at variance with the Constitution. Mr. Justice Brandeis, in the opinion in the *Broderick* case, refers to the "constitutional obligations" under the full faith and credit clause. It is submitted that these obligations extend to the federal court in the case at bar, in the same high degree as they were held to extend to the state court in the cited case.

Appellee quotes some writers on Conflict of Laws who apparently believe so strongly in the principle of territorial independence of jurisdictions, that they are willing to deny any unity in the federal system of justice. Rules followed in ancient times as governing relations between sovereign nations, seem to be carried by these writers into the discussion of relations between courts of different states of this Union without limitation and without a fair consideration of the "Full Faith" constitutional rule. If this conception be logically followed out, it might be thought that every city, town and parish in the United States may be a legal unit for the purposes of dealing with

all questions of jurisdiction as, in some degree, each such unit may have, and some do have, in fact, separate law. Such writers lose sight of the importance of the wide scope of the faith and credit provision and of the fact that the states of this Union must now, more than ever, be considered in a light diffrent from separate, independent nations.

It is therefore submitted that appellee's argument urging that the case at bar be classed among penal suits in which the courts in one state ordinarily do not assist another is not only opposed to the letter of the judicial code but to the letter and spirit of the constitution as well. It is hardly necessary to add that, in modern times, in this Union of States, we are confronted with the ease of quick transportation of persons and intangible as well as tangible wealth. Never has it been more important to the existence of a state that its revenue laws should be given recognition at least to the extent prayed for in this case.

Penal laws today are taken care of in this respect through extradition and Federal legislation against the so-called interstate criminal.

The interstate tax-evader is a menace to good government. He should be curtailed, and the means of curtailment is here presented by appellant to the Federal courts, through a reasonable and fair interpretation of the Judicial Code and of Article IV, Section 1, of the Constitution.

Attention is called to the generally broad construction of the meaning of "Full Faith and Credit." Even suits involving certain penal judgments have been allowed under this construction.

In *Spencer v. Brockway*, (1824) 1 Ohio 122, the state treasurer of Connecticut brought suit in the courts of that state upon two forfeited recognizances which were given by

the defendant for a violation of the penal laws of Connecticut. Judgment was entered for the plaintiff and the latter instituted suit thereon in Ohio. The defendant contended that the plaintiff could not sue on the Connecticut judgment in the courts of Ohio since "the courts of one state will not enforce the penal laws of another." The Supreme Court of Ohio nevertheless affirmed a judgment for the plaintiff, and stated (at pp. 123-124):

> "We do not discover any reason why the state of Connecticut should be prohibited from prosecuting her just claims, in the courts of this state. There is not anything in the constitution, or laws of Ohio, that requires such a prohibition, nor do we believe that it is necessary, or that it would be expedient; * * *.
>
> "The suit is for the recovery of a sum of money. *It is founded on judgments obtained in the Supreme Court of the state of Connecticut, and not on the penal laws of that state.* * * *
>
> "* * * This court has often decided, that judgments regularly obtained in other states, against defendants who have been served with process, or had otherwise appeared, and had an opportunity of making a defense, are to be received as conclusive evidence, and that no re-examination of the grounds on which they are rendered can be permitted. We believe this to be the true construction of that section in the Constitution of the United States, which requires that 'full faith and credit shall be given in each state, to the public acts, records, and judicial proceedings of every other state,' and of the act of Congress, in pursuance thereof, which requires that they shall have such faith and credit given to them, in every court within the United States, as they have by law or usage, in the courts of the states, from whence the said records are, or shall be taken.' The faith and credit here spoken of, requires us to admit, * * * that the money awarded to the plaintiff, is legally due, and that he has a right

to recover it, without a reinvestigation of his claim. Such is the effect of the faith and credit given to it in the state from whence it came, and such must be its effect here, * * *."

In *Healy v. Root*, (Mass. 1831) 11 Pick. 389, the plaintiff procured a judgment in Pennsylvania in a *qui tam* action under a penal statute for usury, and sued on the judgment in Massachusetts. The defendant set up that the original cause of action was for a penalty, wherein the Commonwealth of Pennsylvania was interested, and that since it could not have been sued and enforced in Massachusetts, a judgment rendered thereon should also not be enforced. Justice Putnam said (at page 390):

"* * * we cannot perceive the force of the argument. If the cause of action were local, as trespass *quare clausum fregit*, for example, it could not have been sued here; *but after the plaintiff had by a verdict and judgment reduced his damages to a certainty, the original cause of action would be merged in the judgment.*

"* * *

"In regard to the suggestion, that this would be executing the criminal code of Pennsylvania in this state, we remark that in much more important matters one state will aid another in that behalf. It will, upon proper application, arrest fugitives from justice, and put them in the power of the state whose laws have been violated, to be tried and punished on conviction. If we were to look into the cause of action, there would seem to be no reason why this Court should interfere in preventing a recovery. * * *." (Italics ours.)

The court accordingly held that the judgment was entitled to full faith and credit.

In *State of Indiana ex rel. Stone v. Helmer*, (1886) 21

Iowa 370, the plaintiff recovered a judgment in Indiana in bastardy proceedings and brought suit upon it in Iowa. The defendant contended that the original cause of action was one based upon local police regulation, which could not be enforced in another state. The court admitted that the original claim for the support of the child under the statute of Indiana could not have been enforced in Iowa since it was a penal claim and a matter of local and internal police regulation, but the court went on (at page 372):

> "But where the local jurisdiction has attached, and the courts of that State or sovereignty have properly taken cognizance of the matter, and rendered judgment for such penalty, such judgment is entitled to 'full faith and credit' in every other State. If the court rendering the judgment had jurisdiction of the subject matter and the parties, it is sufficient to entitle the plaintiff therein to maintain an action thereon in another State. And the courts of such other State will not inquire into the facts upon which it was based, nor whether the cause of action would have been enforced by them. * * *."

In *Schuler v. Schuler*, (1904) 209 Ill. 522, 71 N. E. 16, the plaintiff brought an action of desertion against her husband in Pennsylvania and secured a judgment ordering the defendant to pay five dollars a week for support. Several years later the plaintiff sued the defendant on her judgment in Illinois in an action of debt. The defendant contended that the proceedings in Pennsylvaia were of a criminal or penal character and therefore that the judgment was not actionable in Illinois. The Supreme Court of Illinois nevertheless held that the Pennsylvania judgment would be recognized. Justice Boggs said (209 Ill. p. 526):

> "The provision of the constitution of the United States which requires that full faith and credit shall

be given in each State to the public acts, records and judicial proceedings of every other State, does not require a State to enforce the penal laws or the local police regulations of another State. *But where a court of a sister State, having jurisdiction of the persons and of the subject matter, has taken cognizance and rendered judgment in a sum of money for the penalty prescribed or amount provided for under such a statute, the judgment so rendered is entitled to full faith and credit in every other State.* * * *." (Italics ours.)

In *Interstate Savings & Trust Co. v. Wyatt*, (1917) 63 Colo. 1, 304, 164 Pac. 506, the plaintiff brought suit in Texas under a statute of that state giving to a person who pays more than the legal rate of interest the right to recover double the amount of interest paid. The plaintiff recovered a judgment and sued upon it in Colorado. The defendant set up that the judgment was not entitled to full faith and credit because it was penal in character. The court held that full faith and credit should be extended to the judgment, since the claim sued upon although penal in a sense, was remedial to a certain extent and therefore not penal in the international meaning.

In *Jordan v. Muse*, (1909) 88 Ark. 587, 589, 115 S. W. 162, suit was brought in Arkansas upon a decree rendered by the Court of Chancery of Tennessee. The defendant set up that the judgment was based upon a violation of his public duty as a public officer of Tennessee. The court held that the original cause of action was merged in the Tennessee decree and that the mandate of the constitution required that full faith and credit be given to such decree.

V. THE RECENT DECISION OF *PEOPLE V. COE MANUFACTURING COMPANY* SUPPORTS APPELLANT'S POSITION AS TO THE ENFORCEABILITY OF THE JUDGMENT HEREIN WITHIN THE STATE OF ILLINOIS.

The most recent state court decision on the issue supports appellant's position as to the enforceability of this tax judgment within the State of Illinois.

In *People v. Coe Manufacturing Company*, (1934) (Supreme Court of New Jersey 1932) 10 N. J. Misc. 1161, 162 Atl. 872, affirmed in 172 Atl. 198 (1934), the court held that the state of New York might bring an action in a New Jersey court on a New York judgment obtained for taxes imposed by a New York statute. Judge Caffrey pointed out (162 Atl. 872, 873):

> "Of course, if this were an original suit for the collection of taxes due to the state of New York, the plaintiff would be without relief, because the principle is well settled, without the need of citation, that the courts of one state will not enforce a claim for taxes as such in any other jurisdiction than that in which the taxes are due. Colorado v. Harbeck, 232 N. Y. 71, 133 N. E. 357.
>
> "*As I view this matter, the suit in this court is not for the collection of taxes, but for the collection of a judgment which is based on a tax claim, and the original character of the claim has been merged in the judgment.* In so holding I am not unmindful of Huntington v. Attrill, 146 U. S. 657, 13 S. Ct. 224, 36 L. Ed. 1123, nor Wisconsin v. Pelican Insurance Company, 127 U. S. 265, 8 S. Ct. 1370, 32 L. Ed. 239." (Italics ours.)

The New Jersey Court of Errors and Appeals, being the highest court of that state, on an appeal of the above *Coe* case affirmed the same on April 12, 1934 (172 Atl. 198,

199-200), and we quote in part from the opinion of Judge Lloyd, who delivered the opinion of that Court:

> "The right of the state of New York to exclude corporations of other states cannot be open to question, and its right to admit such corporations for the transaction of business within its borders upon such terms as it deems wise is likewise not open to question. When, therefore, as a privilege of transacting its business therein the state exacted for that privilege a franchise tax or sum of money proportioned to the earning power of the corporation it was wholly within its rights. Bass, Ratcliff & Gretton v. State Tax Commission, 266 U. S. 271, * * * It was then optional with the corporation to avail itself of the privilege accorded or to refrain from doing so. When it did avail itself of the opportunity thus afforded it did so under the implied obligation that it would comply with the conditions upon which it was permitted to enter.
>
> "Its own action carried with it, under the interpretation as given to the statute by the courts of that state (binding here) the obligation to personally see that the license fees or franchise taxes were paid. It could not accept the benefits without incurring the burdens. It is true the statute imposed certain penalties for failure to comply with the obligation thus assumed, but these were nothing more than the obligation frequently imposed in ordinary contracts between individuals and became as it were liquidated damages for the breach.
>
> "The state of New York, having in its own court recovered judgment against the appellant (the appellant having been personally served and present therein), jurisdiction of the person was obtained. When it was there determined that the statute imposed a personal liability upon the corporation, it was the construction by the court of that state of its own laws. Having been so determined, the appellant was concluded on those two phases of the litigation and could not thereafter deny jurisdiction either of the

subject matter or of the person; nor could it assert another interpretation of the act.

"Our added view is that even though the door to contend that the statute creates penalties which may not be enforced outside the state of New York be open to the appellant in this state (which may be debatable), the action was not to collect such penalty, but to collect a debt which the appellant had impliedly agreed to pay.

"If such claims as are here presented were not enforcible against foreign corporations wherever found, the states of the Union would be subject to grave wrongs from without, inasmuch as corporations establish important connections in states other than those of their incorporation, and transact large business therein without the investment of a dollar or the placing of tangible property within their borders whereby redress may be had against corporations in default."

The appellee's interpretation of the case of *People v. Coe Mfg. Co.* is this: that because the tax therein sought to be collected by New York was, in effect, a "service charge" made against the Coe Co. in return for said company's New York foreign corporation license, it was in the nature of "contractual" liability and therefore dissimilar to an assessment made without any element of consent. Appellee asserts that, whereas this alleged distinction takes the *Coe* case out of any classification with "penal" judgments based on claims or fines imposed without any assent of the debtor, the case at bar represents an original debt imposed without any element of assent and hence belongs in the same classification as "penal" claims of foreign jurisdictions. Appellee supports its argument on this point by reference to the American Law Institute's "Restatement of the Law of Conflict of Laws" (1934), Section 443, Subsection d, wherein the following illustration appears:

"A, a foreign corporation, applies for permission to do local business in state X. Permission is granted to X on terms, among others that a stipulated fee be paid by A. A fails to pay the fee. X can sue A in state Y upon the judgment and may recover thereon."

Appellant submits that this interpretation of the law of the *Coe* case is entirely too narrow. Of course, it was unnecessary for the New Jersey court to go further than adopt this interpretation for the purpose of giving the State of New York the relief it desired.

In the *Coe* case, supra, the New Jersey corporation is said to have made a contract with the State of New York when it applied for its franchise to transact business. If this is to be called a contract, we submit that all taxes, franchise or otherwise, against a foreign corporation, should go into the same classification. Unquestionably New York could have increased its franchise charges at any time and the Coe Company would be obligated to pay them as certainly as it obligated itself to pay the original fee.

In the instant case, the White Company entered Wisconsin and upon obtaining its franchise, pledged itself to obey Wisconsin law and to pay the Wisconsin income tax as a condition for the privilege of transacting business within the state. We submit that there is no distinction whatever between the reasoning relied on by the New Jersey court in the *Coe* case and the appellant's case here presented.

VI. MOST TEXTWRITERS AND AUTHORITIES ARE IN ACCORD WITH THE VIEW THAT JUDGMENTS BASED UPON TAX CLAIMS ARE ENTITLED TO FULL FAITH AND CREDIT IN THE COURTS OF SISTER STATES.

Comments by law-writers appear to sustain our views. 44 Harvard L. Rev., 1265 (1931); 29 Columbia L. Rev. 782 (1929). Vol. 12, No. 1, New York Law Review, page 137. In 46 Harvard L. Rev. 193, at page 215, the comment is:

> "* * * A corporate franchise tax may be owed by a corporation all of whose property is located and business conducted in states other than that in which it is incorporated. * * * Unless a state is permitted to maintain actions in other states for tax collection purposes, complete escape from tax liabilities will often be accomplished. * * *."

The following is a comment on the *Coe* case appearing in 42 Yale L. J. 1131-1132-1133 (1933):

> "Historically, the refusal to enforce foreign tax claims is explained on the theory that the English courts considered such enforcement injurious to local commerce. More recently it has been suggested that a state should not enforce a foreign tax suit because of the additional burden thereby placed upon its courts and the difficulties attendant upon the assessment of a tax in conformity with complex foreign revenue statutes. In addition, the very nature of the tax might be inconsistent with established local policy. *But it may be questioned whether these arguments are applicable to the situation in the principal case,* [*People of the State of New York v. Coe Mfg. Co.*, in the New Jersey Supreme Court] *where the tax claim was reduced to judgment in the foreign state, since the local court would have to consider only matters of jurisdiction or defenses which might be raised on collateral attack in the taxing state.*

"• • •

"The historical ground for denying enforcement of foreign tax claims has, of course, disappeared as between the several states. Moreover, the present concentration of wealth in the form of intangibles easily transported across state lines has rendered more difficult the problem of enforcement. These considerations, in addition to the immediate and pressing need of the states for revenue, might well outweigh the traditional opposition to extraterritorial enforcement of tax claims. *Clearly at least, the constitutional mandate of full faith and credit affords ample support for the enforcement by a local court of such claim when it has been first reduced to judgment in the taxing state.*" (Italics ours.)

See also 18 Cornell L. Q. 581 (1933).

We submit that no tax judgment obtained in a sister state, whether its foundation be of the nature described in the "Restatement" or otherwise, should be classed with "penal" judgments and arbitrarily withheld from the jurisdiction of a United States District Court. A fear or hesitancy to permit one state or a county thereof to further its governmental interests in the pursuit of a tax-evader who has removed himself and his property to another state is unwarranted. Individuals are permitted by Federal law to sue upon any civil cause of action where other jurisdictional facts appear. Why should there be a discrimination against an out-of-state governmental unit with foreign nations? It is submitted that neither the formulators of the constitution nor of the judicial code can be said to have intended such an unreasonable discrimination.

Federal courts in private cases interpret and enforce the laws of sister states. In fact, many controversies in-

volve the interpretation of various state revenue acts. Individuals are permitted to sue state and municipal agencies in Federal courts in matters involving state revenue laws and assessments.

Palmolive Company v. Conway, et al., (1932) 56 Fed. (2d) 83;
Buick Motor Co. v. Milwaukee County, et al., (1939) 43 Fed. (2d) 385.

If it is a "suit of a civil nature" when the alleged tax debtor is plaintiff, why is it not a civil action when he is the defendant? The individual asks relief against a state agency generally to protect his rights under the Federal Constitution. In the case at bar the appellant as a state agency asks to protect and promote its rights under the Federal Constitution's "Full Faith and Credit" clause.

Although Prof. J. H. Beale, in his very recent text on Conflict of Laws, Vol. 2, page 1410, cites the trial court's decision in the instant case, and in Vol. 3 at page 1567, *In re Martin's Will*, 255 N. Y. 359, 174 N. E. 753, wherein it was held that it is not an abuse of discretion under certain circumstances for the Surrogate to refuse to transmit estate assets to a sister state (deceased's domicile) to pay an inheritance tax, his comment on the latter is:

> "This is a most unfortunate, as well as unneighborly decision, and it is hoped it will not be followed."

At page 1638, Vol. 3, Conflict of Laws, Prof. Beale, after having reviewed the *Harbeck* and other cases, says:

> "* * * the question (i.e. enforcement of the revenue laws of a sister state) is *still open in federal courts and in almost all, if not all, of the state courts* * * *"

Attention is called to the British case of *Foster v. Driscoll*, (1929) 1 K. B. 470, wherein a British contract was denied recognition because its execution involved violation of the United States Liquor Prohibition Laws. This recognition of a United States penal law by a foreign sovereignty is commendable. We believe recognition by Federal courts of the revenue laws of sister states of this Union should be held as not only commendable but required by our constitutional law and judicial code.

CONCLUSION

Much of the above argument extends to the proposition that we should be allowed the use of Federal courts outside of Wisconsin to bring actions upon tax liabilities which have not been reduced to judgment. To this proposition many cases such as those cited in the District Judge's decision (Certificate p. 14) appear to be opposed. Those cases are distinguishable from the instant one upon the ground that they involved original actions and not an action based upon a valid judgment. Those cases seem to follow the ancient, obsolete doctrine of international law that one government will not assist another in the enforcement of its revenue laws, without any consideration of the fact that United States is all one country and the rules applicable to international relations ought not apply. We submit that the harsh rule of *Colorado v. Harbeck*, (1921) 133 N. E. 357, 232 N. Y. 71 (which decision, in any event, is not applicable to the facts in the instant case), ought not apply in modern times and the Federal courts ought to be the first to recognize the need for nation-wide cooperation in the enforcement of the revenue laws of all states, which laws are the foundations of their existence.

If this court hesitates to open the door of Federal courts to state revenue claims not predicated on judgments, at least it ought not hesitate to recognize judgments based upon such claims and permit the prosecution of suits thereon in cases such as the case at bar.

For the above reasons and upon the above authorities, it is respectfully submitted that the question certified should be answered in the affirmative.

WM. A. ZABEL,
District Attorney,
Milwaukee County, Wisconsin;

O. L. O'BOYLE,
Corporation Counsel,
Milwaukee County, Wisconsin;

CLARK J. A. HAZELWOOD,
Assistant Corporation Counsel,
Milwaukee County, Wisconsin;
Attorneys for Milwaukee County.

JAMES E. FINNEGAN,
Attorney General,
State of Wisconsin;

HERBERT H. NAUJOKS,
Assistant Attorney General,
State of Wisconsin;

JAMES G. CULBERTSON,
of Chicago, Illinois,
of Counsel.